

Before the
Federal Communications Commission
 Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re application of)
)
 WORLDCOM, INC , and its Subsidiaries as)
 DEBTOR IN POSSESSION)
 Transferor)
)
 AND)
)
 MCI, INC , and its Subsidiaries)
 Transferee)
)
 For consent to transfer of control of licenses and)
authorizations held by WorldCom in bankruptcy)

WC Docket 02-215

To: The Commission

MOTION TO DISCLOSE DOCUMENTS

Margaret F Snyder, by her attorneys, hereby moves the Commission, pursuant to Section 0 451 of the Commission's Rules, to make available for public inspection copies of settlement agreements between WorldCom, Inc. ("WorldCom"), BellSouth Telecommunications, Inc. ("BellSouth"), Verizon Communications, Inc. ("Verizon") and SBC Telecommunications, Inc ("SBC") in connection with the above-referenced applications for transfer of control of WorldCom, Inc.'s licenses, authorizations and certifications. BellSouth, Verizon and SBC are referred to herein as the "RBOC Parties "

Under the terms of the *Protective Order*, released November 4, 2003, DA 03-3545, undersigned counsel has reviewed, and obtained copies of, the settlement agreements between WorldCom and BellSouth and between WorldCom and Verizon.

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Counsel has reviewed, but not been afforded the opportunity to copy the SBC agreement¹

Counsel's review of the settlement agreements reveals that they cannot be properly withheld from public inspection pursuant to Section 0 451(b) of the Rules. The settlement agreements contain provisions whereby the RBOC Parties agreed not to assert oppositions to the above-referenced applications in return for monetary consideration

The BellSouth Settlement Agreement provides an example. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹ Order, released November 21, 2003, DA 03-3745

[REDACTED]

[REDACTED] Prior FCC approval is not required for the BellSouth Settlement Agreement to take effect.

The Verizon Settlement Agreement [REDACTED]

[REDACTED]

[REDACTED] Prior FCC approval is not required for the Verizon Settlement Agreement to take effect.

The SBC Settlement Agreement [REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Prior FCC approval is not required for the SBC

Settlement Agreement to take effect

SBC's November 13, 2003, publicly filed letter, states that the Settlement Agreement provides for a "substantial monetary recovery on SBC's claims." This, according to SBC "may be misconstrued by other creditors of WorldCom." Thus, it appears that SBC was able to negotiate a substantially better settlement than other WorldCom creditors. It is this information, the exact amount of the settlement that should be disclosed. The RBOC Parties' Settlement Agreements contain provisions barring the RBOC Parties from filing a Petition to Deny in the above referenced proceeding, or otherwise opposing WorldCom's attempts to transfer control of its licenses and authorizations from its pre-bankruptcy entity to its post-bankruptcy entity.

Clearly, WorldCom paid the RBOC Parties for their silence. This explains why the RBOC Parties were able to get a substantial monetary recovery that may be "misconstrued" by other creditors. While the exact dollar amount paid for the silence of the RBOC Parties is not explicit, there can be no doubt that the RBOC Parties were well paid for their silence. The declaration of John H. Atterbury, SBC's Group Vice President is instructive. Therein he states [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED] Mr. Atterbury's declaration falls far short of the requirements of Section 1.935(b)(1) which calls for an affidavit specifically stating that WorldCom has not paid SBC any money or other consideration in excess of SBC's legitimate and prudent expenses. In fact, each of the RBOC Parties in essence claims that it was paid no more than what it was owed. This, however, is a bankruptcy case and the question is not what the RBOC Parties were owed, but rather what were they entitled to receive in the bankruptcy proceeding. There is a simple formula that can be applied to provide a working estimate of what the RBOC Parties were entitled to obtain in the bankruptcy proceeding. The Commission should take the funds received and to be received by the RBOC Parties and multiply that by the percentage that other creditors of WorldCom received. Published reports indicate that WorldCom's bondholders will receive 36 cents on the dollar, other unsecured creditors will receive less [REDACTED]

[REDACTED]

[REDACTED] Applying this formula, if WorldCom bondholders received 36% of their total claims, the RBOC Parties should have received 36% or less of their claims. Under that hypothesis, any amount over 36% is the amount that the RBOC Parties received for their silence in clear and blatant violation of Section 1.935 of the Commission's Rules.

Section 1.935 provides, in pertinent part, "Parties that have filed or threatened to file a petition to deny, informal objection or other pleading against an application and then seek to withdraw or request dismissal of, or refrain from filing, the petition, either unilaterally or in exchange for a financial consideration, must obtain the approval of the

Commission.”² Section 1.935(c) provides that “No person shall make or receive any payments in exchange for withdrawing a threat to file or refraining from filing a petition to deny, informal objection, or any other pleading against an application.” Section 1.935(c) and (d)(1)-(4) set forth the specific requirements for compliance in the case of a settlement. In the case of the RBOC Parties, they all received payments in exchange for withdrawing a threat to file or refraining from filing a petition to deny, informal objection, or some other pleading against WorldCom’s applications. The settlement agreements were belatedly filed with the Commission, after the Bankruptcy Court approved them. There is no provision in any of the settlement agreements requiring prior approval of the FCC as required by Section 1.935 of the Commission’s Rules. There was

² Section 1.935(c) provides: No person shall make or receive any payments in exchange for withdrawing a threat to file or refraining from filing a petition to deny, informal objection, or any other pleading against an application. For the purposes of this section, reimbursement by an applicant of the legitimate and prudent expenses of a potential petitioner or objector, incurred reasonably and directly in preparing to file a petition to deny, will not be considered to be payment for refraining from filing a petition to deny or an informal objection. Payments made directly to a potential petitioner or objector, or a person related to a potential petitioner or objector, to implement non-financial promises are prohibited unless specifically approved by the Commission.

(d) For the purposes of this section:

(1) Affidavits filed pursuant to this section must be executed by the filing party, if an individual, a partner having personal knowledge of the facts, if a partnership, or an officer having personal knowledge of the facts, if a corporation or association.

(2) Each application, petition to deny, informal objection or other pleading is deemed to be pending before the Commission from the time the petition to deny is filed with the Commission until such time as an order or correspondence of the Commission granting, denying or dismissing it is no longer subject to reconsideration by the Commission or to review by any court.

(3) “Legitimate and prudent expenses” are those expenses reasonably incurred by a party in preparing to file, filing, prosecuting and/or settling its application, petition to deny, informal objection or other pleading for which reimbursement is sought.

(4) “Other consideration” consists of financial concessions, including, but not limited to, the transfer of assets or the provision of tangible pecuniary benefit, as well as non-financial concessions that confer any type of benefit on the recipient.

no reason to include such a provision since the Commission cannot approve what is already a done deal

The settlement agreements do not come under any of the 0.451(b) "Records which are not routinely available for public inspection." On the other hand, the plain language of Section 1.935 of the Rules requires the agreements to be filed with the Commission.

In *Paul D. Colford, The Daily News*, 17 FCC Rcd 2073 (2002), the Commission said, "In applying Exemption 4 [FOIA Exemption 4, 5 U.S.C. §552 (b)(4)] protection, courts have used the following test originally set out in *National Parks and Conservation Ass'n v. Morton (National Parks I)*: 'a commercial or financial matter is 'confidential' . . . if disclosure of the information is likely either . . . (1) to impair the Government's ability to obtain necessary information in the future, or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained.'"

[footnote omitted] At footnote 13, the Commission observed, "The Commission's rules currently provide that the following materials related to trade secrets and commercial or financial information are presumed not routinely available for public inspection: (i) financial reports submitted by licensees of broadcast stations pursuant to former § 1.611; (ii) applications for equipment authorizations (type acceptance, type approval, certification, or advance approval of subscription television systems), and materials relating to such applications, (iii) information submitted in connection with audits, investigations, and examination of records pursuant to 47 U.S.C. § 220; (iv) programming contracts between programmers and multichannel video programming distributors, (v) certain materials submitted to the Commission prior to July 4, 1967, or

with respect to equipment authorizations between July 4, 1967 and March 25, 1974; and (v) rates, terms, and conditions in any agreement between a U.S. carrier and a foreign carrier that govern the settlement of U S international traffic. *See* 47 C.F.R. § 0.457(d). The amounts paid pursuant to a settlement agreement are not within the classes of protected documents under 5 U.S.C. §552

In *Bell Atlantic New Zealand Holdings, Inc. and Pacific Telecom Inc.*, DA 03-3010, released October 1, 2003, the Commission repeated its policy that parties filing petitions to deny "generally must be afforded access to all information submitted by licensees that bear upon their applications," citing *Confidential Information Submitted to the Commission*, 13 FCC Rcd 24816 (1998), but found that the confidentiality of certain financially sensitive information should be protected, and issued a protective order, as here. The protected documents in that case were a pro forma balance sheet and associated bank letter, and audited, consolidated financial statements. Ms. Snyder does not object to such documents being kept confidential. Certain of the attachments to the various settlement agreements appear to contain confidential information. If so, these attachments should be kept confidential. However, there is no precedent that authorizes the Commission to conceal from public view the amount WorldCom paid to buy the silence of the RBOC Parties.

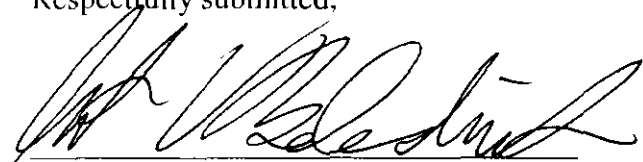
WorldCom has a history of paying hush money.³ It appears that WorldCom paid the RBOC Parties an illegal premium above what other legitimate creditors could expect to receive in return for the RBOC Parties' promises not to disclose information to the FCC, not to file a petition to deny or otherwise not to interfere in WorldCom's attempts to

transfer its licenses. There is no public interest reason for the Commission to permit these carriers to withhold documents from public scrutiny. Investors lost billions of dollars because decisions were taken in secrecy by WorldCom's management. The public has a right to review the terms and conditions of the documents on which the settlement was based.

For the reasons stated herein, the RBOC Parties' Settlement Agreements should be made available for public inspection.

Respectfully submitted,

By



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December 1, 2003

³ See Fifth Supplement to Petition to Deny Transfer of Licenses, Authorizations and Certifications of WorldCom, Inc., filed November 6, 2003 in WC Docket 02-215

CERTIFICATE OF SERVICE

I, Sherry Schunemann, do hereby certify that a copy of the foregoing "Motion to Disclose Documents" was mailed by First Class U.S. Mail, postage prepaid or via email, this 1st day of December, 2003, to the following

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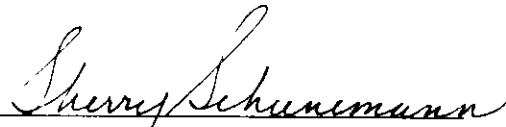
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